Supreme Court, U.S.
FILED

00 336 JUN 26 2000

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MARVA L. HICKMAN
- PETITIONER

Vs

LOUIS V. BAESEL
- RESPONDENT

On Petition For Writ Of Certiorari to

To The United States Court of Appeals for the First Appellate District Division Five

---

PETITION FOR WRIT OF CERTIORARI

MARVA L. HICKMAN, PRO SE
419 DARIEN AVENUE
OAKLAND, CA 94603-2121
(510) 632-7727

25PP

QUESTIONS PRESENTED

1. Does the Appeals Court use the same standard of review on issues presented by Pro Se litigants as those presented by attorneys.

2. Is it in the interest of justice to have an appellant's appeal dismissed without providing specific instructions as to the deficiencies that rendered the brief defective.

3. Is it in the interest of justice to strike an appellant's brief that is in substantial compliance with the rules of the court.

4. Is it in the interest of justice to dismiss an appeal without determining whether or not the case has merit.

5. Did the appellate court act in the interest of justice when it dismissed appellant's appeal when no other avenue for redress exist for the appellant.

6. Is it in the best interest of justice to deny the appellant access to the appellant court due to a technical error or oversight.

7. Is it in the interest of justice to dismiss the appellant's case without determining whether the appellant received a fair trial.

8. Is it in the interest of justice to order an appellant to trial when her attorney removes himself from the case one month prior to the trial.

9. Did the Appellate Court deny the appellant due process or equal protection of the law in dismissing the appellant's appeal.

LIST OF PARTIES

All parties do not appear in the caption of the case in the cover page.

Harold J. Rucker – Cross-defendant

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI
Petitioner respectfully prays that a write of certiorari issue to review the judgment below

OPINIONS BELOW

For cases in state courts:
The opinion of the highest state court to review the merits appears
at Appendix "C" to the petition and is
X is unpublished

The opinion of the trial court appears at
Appendix "B" to the petition and is
X is unpublished

CONSTITUTIONAL AND STATUTORY REVISIONS INVOLVED

United States Constitution, Amendment 14, Section 1

JURISDICTION

For cases from state courts:

The date of which the highest state court decided my case was April 26, 2000. A copy of the order denying rehearing appears at Appendix "A-1"

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257(a)

STATEMENT OF THE CASE

Appellant purchased Florida VA property for the purpose of generating revenues to fund a business development. Respondent established a business relationship with a Florida broker to specifically obtain California buyers to purchase Florida foreclosure property. Respondent used handouts to describe the nature of his program. Respondent was in fact acting as Appellant's broker whereby signing a disclosure statement regarding the agency relationship. Respondent breached his fiduciary duty by providing false information, misrepresenting and withholding information from Appellant.

After Appellant purchased her properties, it was discovered that the Respondent misrepresented the selling price (VA list price) of the property being sold by the Veterans Administration (herein as VA). Appellant received information from the VA as to the true list price of the properties. Respondent stated that he inadvertently forgot to give the list price. Witnesses for the Appellant testified during the trial that the VA list price was not disclosed to either of them; however, one of the Respondent's clients (Mary Wilder) was informed.

The Respondent misrepresented that the recommended bid calculated by Hotz Realty was actually the Florida VA's recommended bid. The Respondent further failed to disclose that the

calculated by Hotz Realty as a mark up of 10-15% of the VA's list price. The Respondent misrepresented to the Appellant that the purchase of said properties would yield a positive monthly flow although he did not know the market value of the properties. Appellant discovered that the Respondent did in fact know the market value of the properties as he stated that in his answers to Appellant's request for admissions. The Respondent encouraged the Appellant to bid higher than the recommended bid when the Respondent bid on the same property, but substantially lower. The Respondent is a real estate broker of twenty years or more and known or should have known how the market value of properties were derived.

Appellant discovered that the net fee to the VA, after a down payment, was higher that it should have been. The Respondent misrepresented that the high net fee to the VA was due to points as fees to sell the loan. The Respondent did not disclose points and fees and there was no assistance to the Appellant at the close of escrow to explain the costs and fees.

The Appellant was ordered to take this case to trial and subsequently hired an attorney. Two months before the start of trial, Appellant's attorney elected not to continue with this case. The trial judge denied Appellant of her right of continuance if the trial date. Although the Appellant was not mentally or physically capable

of conducting trial in her own, a bench trial was ordered and conducted over a 6-month period.

The Respondent was ordered to provide the names and address of the individuals who purchased Florida property through the Respondent during the initial discovery period in 1996 and failed to obey that order. After having to pay for a records search, the Appellant was provided with a list of 196 names from the VA, of the individuals who purchased property through the respondent. During trial, a motion for terminating sanctions was filed. The Respondent, for the first time during trial, alleged that he lost his records containing the names of his clients sometime in February 1996.

The court placed a time limit on the cross-examination of the Respondent by the Appellant, which hampered her ability to address the necessary issues. The trial court instructed the Appellant not to ask questions relating to the cross complaint filed by the Respondent. The Appellant was also directed not to ask questions regarding the California VA properties sold by the Respondent, which are handled in the same manner as those sold in Florida.

The Appellant objected to the testimony if expert witnesses because she did not have tune to prepare for cross-examination. The court advised the Appellant that she should have requested an experts list prior to trial. The Appellant explained that her attorney was to

handle the trial and she was not informed prior to his departure. The Appellant's attorney further failed to inform the Appellant that jury fees had not been posted as required prior to the start of trial. Documentation from the VA that demonstrated that the Respondent breached his fiduciary duty to the Appellant was not allowed as evidence, although these documents fell under the exception to the hearsay rule, California Evidence Code 1280.

The Appellant filed this law suit in 1996 against the Respondent (California Broker), Sandy and Edwin Hotz (Florida brokers), for Fraud, Negligence, and Breach of Fiduciary duty in the sale of real estate in the state of Florida. Edwin and Sandy Hotz were dismissed from the complaint on an order granting a motion to quash service of summons for lack of California jurisdiction. Hotz's later testified at trial as to their relationship with the Respondent, and the number of homes they managed for Californian's who purchased property in Florida through the Respondent.

During the discovery period, the appellant had to file several motions to compel the Respondent to comply. The Respondent was ordered to provide all the names of his clients who purchased Florida property, which he failed to do. The Respondent testified at trial that he lost his business records in 1996. At no time

during discovery or during the Appellant's attempts and court orders for the records, did the Respondent stated he lost his records.

The Respondent filed a cross complaint against the Appellant and her business associate Harold J. Rucker alleging intentional and negligent interference with economic relationship; slander; libel, and for injunctive and declaratory relief.

The Appellant sat through a lengthy deposition for the Respondent in 1996 and no written agreement was made for a continuance of that deposition. The Respondent attempted to depose the appellant again in 1998 and subsequently filed a motion to compel. The law and motion court sanctioned the Appellant and ordered her to sit through a second deposition.

In 1998, the Appellant was ordered to move this case to trial even though the Appellant made three attempts to continue the trial date because her attorney decided to back out one month before the start of trial. Appellant pleaded to the court that she was not mentally or physically capable of conducting trial without an attorney, but was ordered to do so.

The Respondent's motion for judgment was granted for fraud and negligence; as to breach of fiduciary duty, that motion was denied.

A Statement of Decision was made by the trial judge in favor of the Respondent and was

awarded court costs. The Respondent's cross-complaint was dismissed for lack of proof.

The Appellant filed a Motion of Intention to Move for a New Trial and a subsequent motion for Reconsideration of Order denying New Trial.

The Appellant filed a Notice of Appeal. The Appeal court granted the Appellant an extension for good cause to file her opening brief due to the illness of her mother who resided in the state of Illinois. The Appellant filed her opening brief in December 1999, and subsequently, the Respondent filed a motion to strike the Appellant's Non Conforming Brief or in the Alternative to Dismiss the Appellant's Appeal. The Appellant argued that her brief was substantially in compliance. The motion was granted and the Appellant was to file a new brief in compliance with CRC, Rule 15.

Unfortunately the Appellant had to file another extension for good cause due to the death of her mother in January 2000.

The Appellant filed a new brief in accordance with Rule 15, as she understood it. Rule 15 has several sub-sections and the court did not specify what part of the rule the Appellant's brief was in non-compliance.

The Court of Appeal ordered the Appellant's opening brief stricken and dismissed for failure to file a brief, CRC, Rule 17. The Appellant filed a Motion for Reinstatement and a Motion for Renewed Motion for Reinstatement, which were both denied.

REASONS FOR GRANTING THE MOTION

A motion to strike a brief is directed to the discretion of the reviewing court [Cal Rules of Ct., Rule 18]. Public policy favors hearing appellate cases on the merits rather than depriving a party of his or her right of appeal because of technical noncompliance in matter of form [Litzmann v Workerman's Comp. AAP. Bd (1968) 266 Cal. App 2d 203, 2095, 71, Cal Rptr 731] The Appellant presented statement of case, argument, legal authority and referenced the matters throughout her brief. This case is about a breach of fiduciary duty and a violation of professional standard of care of a service to a client who relied upon that professional.

The Appellant Court may dismiss an appeal for failure to file a brief substantially in compliance with the rule when it has directed that a non conforming brief be stricken with leave to file a new grief and the party fails to subsequently file a complying brief, [Berger v Godden (1998) 163 Cal App 3d 1113, 1118, 210 Cal Rptr109

Litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances. (N.A.A.C.P. v Button (1963) 371 U.S. 415, 430 [83 S. Ct. 328, 336, 9 L.Ed.2 405, 416]) Appellant has no other options or avenues to seek redress in this case. Appellant fails to see the justice in having her appeal dismissed on a technical error.

This case is about a breach of fiduciary duty and violation of professional standard of care of a service to a client who relied upon that professional in the interest of the public. If not addressed accordingly, there will be others whose livelihood will be affected by the Respondent's dishonest and unprofessional behavior for personal gain.

If not addressed in this court, where else can an appellant go to redress his or her rights of appeal. The court should address an appeal on the merits of the case as opposed to a minor technical error. The Appeal Court's decision as to non compliance must be more specific in order that any deficiencies be corrected.

CONCLUSION

For the foregoing reasons, review should be granted.

Respectfully submitted,

Marva L. Hickman

Date: August 25, 2000

First Appellant District, Division Five, No. A087963

IN THE SUPREME COURT OF CALIFORNIA

Supreme Court Filed APR 26, 2000 Frederick K. Chirich, Clerk, Deputy

MARVA L. HICKMAN,
Appellant
V
LOUIS V. BAESEL, Et Al.
Respondent.
_____/

Appellant's petition for review
DENIED

George
Chief Justice

APPENDIX "A-1"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FIVE

FILED
Court of Appeal-First Dist.
Feb 29, 2000
By Ron D. Barrow, Clerk Deputy

No. A087963

MARVA L. HICKMAN
Plaintiff and Appellant
V
LOUIS V. BAESEL, Et, Al
Defendant.
_____/

BY THE COURT

Appellant's renewed motion to reinstate the appeal is denied.

APPENDIX "A-2"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FIVE

A987963

(Alameda County Superior Ct. No. 8633814)

Filed Court of appeal-First Appellate District
Feb 3, 2000
Ron D. Barrow, Clerk , Deputy

MARVA L. HICKMAN,
Plaintiff and Appellant,
v.
LOUIS V. BAESEL, et at.,
Defendant and Respondents.
_____/

BY THE COURT:

On January 10, 2000, the court granted respondent's motion to strike the filing of appellant's opening brief with leave to file a new brief in compliance with California Rules of Court, Rule 15. On February 2, 1000, appellant submitted for filing a revised version of the appellant's opening brief. The revised appellant's opening brief does not comply with California Rules of Court, rule 15, therefore, the filing of said brief is ordered stricken and the above entitled appeal is dismissed for failure to

APPENDIX "A-3"

file an appellant's opening brief
(California Rules of Court, rule 17)
Date: FEB 3-2000
JONES, P.J.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

WILEY W. MANUEL COURTHOUSE

ENDORCED FILED ALAMEDA COUNTY
JUN 30 1999
CLERK OF THE SUPERIOR COURT BY :
MARYJANE WIESEMANN, DEPUTY

MARVA L. HICKMAN
No 763381-4
Plaintiff
LOUIS V. BAESEL, EDWIN HOTZ, AND
SANDY HOTZ
Does 1 through 10
Defendants.
_____/
RELATED CROSS-COMPLAINT
_____/

JUDGEMENT

This case came on for trial on September 4, 1998. Trial continued according to the Availability of the court, the convenience of the parties, and the convenience of witnesses through March 4, 1999. The case was tried before the Honorable Judith D. Ford sitting without a jury.

APPENDIX "A-4"

Plaintiff and cross-defendant Marva L. Hickman appeared in properia persona. Ryan L. Werner of Werner & Burke appeared for defendant and cross-complainant Louis V. Baesel. Cross-defendant Harold J. Rucker appeared in propria persona. Named defendants Edwin V. Hotz and Sandy Hotz were previously dismissed for lack of personal jurisdiction.

Having received the testimony, documentary evidence and argument of the parties, and the case having been submitted, the court renders judgment as follows:

Plaintiff' complaint alleges that defendant, a real estate broker, defrauded her conspired with others to defraud her, breached his fiduciary duty to her, and acted with gross negligence in connection with her purchase of real property in Florida being offered for sale after foreclosure by the United States Veteran's Administration.

Defendant and cross-complainant alleged that plaintiff, as well as cross-defendant Rucker interfered with his business relationship and defamed him by publication of certain statements about him and his clients and prospective clients, and alleged that he was entitled to declaratory and injunctive relief.

THE COURT HEREBY ORDERS, ADJUDGES AND DECREESS THAT:

As to plaintiff's claims for fraud, conspiracy, and gross negligence, at the close of plaintiff's case the court granted, and hereby grants,

judgment in favor of defendant pursuant to Code of Civil Procedure Section 631.8. The court found, and finds, that the evidence did not establishes reliance on, or damages resulting from, any alleged misrepresentation.

As to plaintiff's claims for breach of fiduciary duty, the court hereby grants judgment in favor of defendant. The court finds the evidence shows that defendant met his standard of care and that plaintiff suffers no damages.

As to defendant and cross-complainant's claims for interference with business relations and defamation the court hereby grants judgment to cross-defendants. The court rules as a matter of law that cross-defendants statements do not amount to defamation per se. Under the circumstances the court declines to issue injunctive or declaratory relief.

ACCORDINGLY:

1. Plaintiff shall take nothing by his cross complaint
2. Cross-complainant shall take nothing for his cross-complaint
3. Pursuant to Code of Civil Procedure § 1032 the court determines that defendant and cross-complainant is the prevailing party and the he shall recover his court costs of suit.

Dated: JUN 30 1999

JUDITH FORD

Judge of the Superior Court